

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MANUEL L. BURNLEY, JR. et al.,

Plaintiffs,

Judge J.P. Stadtmueller

v.

Case No.: 19-cv-364

VILLAGE OF BROWN DEER, et al.,

Defendants.

**PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' REPLY TO PLAINTIFF'S
RESPONSE TO DEFENDANTS' PROPOSED FINDINGS OF FACT**

Plaintiff Manuel L. Burnley, Jr., by and through his attorneys, moves to strike “Defendants’ Reply to Plaintiff’s Response to Defendants’ Proposed Findings of Fact In Support of Motion for Summary Judgment” (Dkt. 54) because it has been improperly filed in violation of Civil L.R. 56. In support of this motion, Plaintiff states:

1. On November 1, 2019, Defendants filed a motion for summary judgment, a memorandum of law pursuant to Civil L.R. 56(b)(1)(A), and proposed findings of fact pursuant to Civil L.R. 56(b)(1)(C). (Dkt. 40, 41, 42).

2. On December 2, 2019, Plaintiff filed a brief in opposition to Defendants’ motion for summary judgment pursuant to Civil L.R. 56(b)(2)(A), a statement of additional facts pursuant to Civil L.R. 56(b)(2)(B)(ii), and a response to Defendants’ proposed findings of fact pursuant to Civil L.R. 56(b)(2)(B)(i). (Dkt. 48, 49, 51).

3. On December 16, 2019, Defendants filed a reply memorandum in support of their motion for summary judgment pursuant to Civil L.R. 56(b)(3)(A) (Dkt. 54), a reply to Plaintiff’s proposed findings of fact pursuant to Civil L.R. 56(b)(3)(B) (Dkt. 55), as well as a document

titled “Defendants’ Reply to Plaintiff’s Response to Defendants’ Proposed Findings of Fact In Support of Motion for Summary Judgment” (Dkt. 54), which consists of replies to each of Plaintiff’s responses to Defendants’ proposed findings of fact.

4. Civil L.R. 56 does not allow for the moving party to file a reply in support of the moving party’s own proposed findings of fact.¹ Accordingly, this Court should strike the document titled “Defendants’ Reply to Plaintiff’s Response to Defendants’ Proposed Findings of Fact In Support of Motion for Summary Judgment.” *See, e.g., Dwyer v. Simandl*, 2013 U.S. Dist. LEXIS 82797, *3 (E.D. Wis. June 11, 2013) (“The defendants filed a document titled ‘Defendants’ Reply to Proposed Findings of Fact,’ which lists objections to Dwyer’s responses to the defendants’ proposed findings of fact. Civil L.R. 56(b)(3)(B), however, only authorizes a reply ‘to any *additional* facts submitted by the opposing party.’ . . . So the defendants’ reply was improper.”); *Redmond v. Sirius Int’l Ins. Corp.*, 2014 U.S. Dist. LEXIS 5089, *55 (E.D. Wis. Jan. 15, 2014) (“The second motion to strike relates to the fact that Sirius replied to Redmond’s response to Sirius’ proposed findings of fact. Responding to this motion, Sirius’ counsel acknowledges that he misread what was permissible under the relevant local rule, Civ. L.R. 56(b)(3)(B), and agrees to withdraw the pleading.”).

¹ Civil L.R. 56(b)(3) provides in pertinent part:

(3) Moving Party’s Materials in Reply. A moving party may file within 14 days of the service of the opposing party’s materials under subsection (b)(2), above:

(A) a reply memorandum;

(B) a reply to any additional facts submitted by the opposing party pursuant to subsection (b)(2) above, in the form prescribed in section (b)(2)(B)(i) above; and

(C) any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c) submitted in reply.

5. WHEREFORE, Plaintiff respectfully requests that this Court strike the “Defendants’ Reply to Plaintiff’s Response to Defendants’ Proposed Findings of Fact In Support of Motion for Summary Judgment” (Dkt. 54).

Dated: December 17, 2019

Respectfully submitted,

/s/ Ben H. Elson
One of Plaintiff’s Attorneys

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